

AMENDED IN SENATE JUNE 27, 2007

AMENDED IN ASSEMBLY MAY 10, 2007

AMENDED IN ASSEMBLY APRIL 17, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 952

Introduced by Assembly Member Mullin

February 22, 2007

An act to amend Section 1366 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 952, as amended, Mullin. Common interest developments: assessments: low- and moderate-income residents.

The Davis-Stirling Common Interest Development Act provides for the creation and regulation of common interest developments. Existing law requires an association established pursuant to the act to levy regular and special assessments sufficient to perform its obligations under the governing documents and the act. Existing law ~~places specified limitations on the amount by which the board may increase regular assessments, and levy special assessments, without a vote complying with certain procedural requirements~~ *prohibits the board of directors from imposing a regular assessment or a special assessment that exceeds certain limits unless the assessment is approved by owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with specified procedures.* Existing law exempts assessments for emergency situations, as described, from these limitations.

This bill would, in addition, prohibit the board of directors from imposing a *regular or special assessment or an increase in the regular assessment of more than 3% on units that are required by law to be provided to low- or moderate-income purchasers without a vote of the owners of those units in accordance with specified procedural requirements that exceeds the specified limits unless the assessment is approved by owner-occupants of affordable units, as defined, constituting a quorum, casting a majority of the votes of those owner-occupants at the same meeting or election. The bill would require an association to establish a payment plan for all regular and special assessments imposed on affordable units for those owner-occupants who request such a plan.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1366 of the Civil Code is amended to
2 read:
3 1366. (a) Except as provided in this section, the association
4 shall levy regular and special assessments sufficient to perform its
5 obligations under the governing documents and this title. However,
6 annual increases in regular assessments for any fiscal year, as
7 authorized by subdivision (b), shall not be imposed unless the
8 board has complied with subdivision (a) of Section 1365 with
9 respect to that fiscal year, or has obtained the approval of owners;
10 ~~constituting a quorum, casting a majority of the votes pursuant to~~
11 ~~subdivision (b) at a meeting or election of the association conducted~~
12 ~~in accordance with Chapter 5 (commencing with Section 7510) of~~
13 ~~Part 3 of Division 2 of Title 1 of the Corporations Code and Section~~
14 ~~7613 of the Corporations Code. For the purposes of this section,~~
15 ~~“quorum” means more than 50 percent of the owners of an~~
16 ~~association.~~
17 (b) (1) Notwithstanding more restrictive limitations placed on
18 the board by the governing documents, the board of directors may
19 not impose a regular assessment that is more than 20 percent
20 greater than the regular assessment for the association’s preceding
21 fiscal year or impose special assessments which in the aggregate
22 exceed 5 percent of the budgeted gross expenses of the association
23 for that fiscal year without *both of the following: the*

(A) *The approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, quorum subparagraph, “quorum” means more than 50 percent of all the owners of an association. This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:*

(B) *The approval of owner-occupants of affordable units, constituting a quorum, casting a majority of the votes of those owner-occupants at the same meeting or election, conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code, in which approval of the assessment is obtained pursuant to subparagraph (A).*

(i) *For the purposes of this subparagraph, “affordable units” means units that are required to be provided to low- or moderate-income purchasers pursuant to a document required by a governmental entity that has been recorded, or referenced in a document recorded, in the office of the county recorder of the county in which the units are located.*

(ii) *For the purposes of this subparagraph, “quorum” means more than 50 percent of the owner-occupants of affordable units.*

(2) *This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:*

~~(1)~~

(A) *An extraordinary expense required by an order of a court.*

~~(2)~~

(B) *An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.*

~~(3)~~

(C) *An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the pro forma*

1 operating budget under Section 1365. However, prior to the
2 imposition or collection of an assessment under this subdivision,
3 the board shall pass a resolution containing written findings as to
4 the necessity of the extraordinary expense involved and why the
5 expense was not or could not have been reasonably foreseen in
6 the budgeting process, and the resolution shall be distributed to
7 the members with the notice of assessment.

8 (c) Regular assessments imposed or collected to perform the
9 obligations of an association under the governing documents or
10 this title shall be exempt from execution by a judgment creditor
11 of the association only to the extent necessary for the association
12 to perform essential services, such as paying for utilities and
13 insurance. In determining the appropriateness of an exemption, a
14 court shall ensure that only essential services are protected under
15 this subdivision.

16 This exemption shall not apply to any consensual pledges, liens,
17 or encumbrances that have been approved by the owners of an
18 association, constituting a quorum, casting a majority of the votes
19 at a meeting or election of the association, or to any state tax lien,
20 or to any lien for labor or materials supplied to the common area.

21 (d) The association shall provide notice by first-class mail to
22 the owners of the separate interests of any increase in the regular
23 or special assessments of the association, not less than 30 nor more
24 than 60 days prior to the increased assessment becoming due.

25 (e) Regular and special assessments levied pursuant to the
26 governing documents are delinquent 15 days after they become
27 due, unless the declaration provides a longer time period, in which
28 case the longer time period shall apply. If an assessment is
29 delinquent the association may recover all of the following:

30 (1) Reasonable costs incurred in collecting the delinquent
31 assessment, including reasonable attorney's fees.

32 (2) A late charge not exceeding 10 percent of the delinquent
33 assessment or ten dollars (\$10), whichever is greater, unless the
34 declaration specifies a late charge in a smaller amount, in which
35 case any late charge imposed shall not exceed the amount specified
36 in the declaration.

37 (3) Interest on all sums imposed in accordance with this section,
38 including the delinquent assessments, reasonable fees and costs
39 of collection, and reasonable attorney's fees, at an annual interest
40 rate not to exceed 12 percent, commencing 30 days after the

1 assessment becomes due, unless the declaration specifies the
2 recovery of interest at a rate of a lesser amount, in which case the
3 lesser rate of interest shall apply.

4 (f) Associations are hereby exempted from interest-rate
5 limitations imposed by Article XV of the California Constitution,
6 subject to the limitations of this section.

7 (g) (1) *An association shall establish a payment plan for all*
8 *regular and special assessments imposed on affordable units, as*
9 *defined in clause (i) of subparagraph (B) of paragraph (1) of*
10 *subdivision (b), for those owner-occupants who request a payment*
11 *plan.*

12 (2) *A payment plan established pursuant to paragraph (1) shall*
13 *not assess interest or late charges if the assessments are fully paid*
14 *within 12 months of the commencement of the payment plan.*

15 ~~SECTION 1. Section 1366 of the Civil Code is amended to~~
16 ~~read:~~

17 ~~1366. (a) Except as provided in this section, the association~~
18 ~~shall levy regular and special assessments sufficient to perform its~~
19 ~~obligations under the governing documents and this title. However,~~
20 ~~annual increases in regular assessments for any fiscal year, as~~
21 ~~authorized by subdivisions (b) and (c), shall not be imposed unless~~
22 ~~the board has complied with subdivision (a) of Section 1365 with~~
23 ~~respect to that fiscal year, or has obtained the approval of owners,~~
24 ~~as specified in subdivisions (b) and (c), constituting a quorum,~~
25 ~~casting a majority of the votes at a meeting or election of the~~
26 ~~association conducted in accordance with Chapter 5 (commencing~~
27 ~~with Section 7510) of Part 3 of Division 2 of Title 1 of the~~
28 ~~Corporations Code and Section 7613 of the Corporations Code.~~
29 ~~For the purposes of this section, "quorum" has the meaning~~
30 ~~specified in paragraph (2) of subdivision (b) or paragraph (2) of~~
31 ~~subdivision (c), as appropriate.~~

32 ~~(b) (1) Notwithstanding more restrictive limitations placed on~~
33 ~~the board by the governing documents, and subject to the~~
34 ~~limitations specified in subdivision (c), the board of directors may~~
35 ~~not impose a regular assessment that is more than 20 percent~~
36 ~~greater than the regular assessment for the association's preceeding~~
37 ~~fiscal year or impose special assessments that in the aggregate~~
38 ~~exceed 5 percent of the budgeted gross expenses of the association~~
39 ~~for that fiscal year without the approval of owners, constituting a~~
40 ~~quorum, casting a majority of the votes at a meeting or election of~~

1 the association conducted in accordance with Chapter 5
2 (commencing with Section 7510) of Part 3 of Division 2 of Title
3 1 of the Corporations Code and Section 7613 of the Corporations
4 Code. This subdivision does not limit assessment increases
5 necessary for emergency situations. For purposes of this section,
6 an emergency situation is any one of the following:

7 (A) An extraordinary expense required by an order of a court.

8 (B) An extraordinary expense necessary to repair or maintain
9 the common interest development or any part of it for which the
10 association is responsible where a threat to personal safety on the
11 property is discovered.

12 (C) An extraordinary expense necessary to repair or maintain
13 the common interest development or any part of it for which the
14 association is responsible that could not have been reasonably
15 foreseen by the board in preparing and distributing the pro forma
16 operating budget under Section 1365. However, prior to the
17 imposition or collection of an assessment under this subdivision,
18 the board shall pass a resolution containing written findings as to
19 the necessity of the extraordinary expense involved and why the
20 expense was not or could not have been reasonably foreseen in
21 the budgeting process, and the resolution shall be distributed to
22 the members with the notice of assessment.

23 (2) For the purposes of this subdivision, “quorum” means more
24 than 50 percent of the owners of an association.

25 (3) For the purposes of this subdivision, “owners” shall not
26 include the owners of units required by law to be provided to low-
27 and moderate-income purchasers.

28 (e) (1) The board of directors may not impose any of the
29 following assessments on units that are required by law to be
30 provided to low- or moderate-income purchasers without the
31 approval of owners of those units, constituting a quorum, casting
32 a majority of the votes of the owners of those units at a meeting
33 or election of the association conducted in accordance with Chapter
34 5 (commencing with Section 7510) of Part 3 of Division 2 of Title
35 1 of the Corporations Code and Section 7613 of the Corporations
36 Code:

37 (A) A special assessment.

38 (B) A regular assessment that is more than 3 percent greater
39 than the assessment imposed on those units for the association’s
40 preceding fiscal year.

1 ~~(2) For the purposes of this subdivision, “quorum” means more~~
2 ~~than 50 percent of the owners of units required by law to be~~
3 ~~provided to low- and moderate-income purchasers.~~

4 ~~(d) Regular assessments imposed or collected to perform the~~
5 ~~obligations of an association under the governing documents or~~
6 ~~this title shall be exempt from execution by a judgment creditor~~
7 ~~of the association only to the extent necessary for the association~~
8 ~~to perform essential services, such as paying for utilities and~~
9 ~~insurance. In determining the appropriateness of an exemption, a~~
10 ~~court shall ensure that only essential services are protected under~~
11 ~~this subdivision.~~

12 ~~This exemption shall not apply to any consensual pledges, liens,~~
13 ~~or encumbrances that have been approved by the owners of an~~
14 ~~association, constituting a quorum, casting a majority of the votes~~
15 ~~at a meeting or election of the association, or to any state tax lien,~~
16 ~~or to any lien for labor or materials supplied to the common area.~~

17 ~~(e) The association shall provide notice by first-class mail to~~
18 ~~the owners of the separate interests of any increase in the regular~~
19 ~~or special assessments of the association, not less than 30 nor more~~
20 ~~than 60 days prior to the increased assessment becoming due.~~

21 ~~(f) Regular and special assessments levied pursuant to the~~
22 ~~governing documents are delinquent 15 days after they become~~
23 ~~due, unless the declaration provides a longer time period, in which~~
24 ~~case the longer time period shall apply. If an assessment is~~
25 ~~delinquent the association may recover all of the following:~~

26 ~~(1) Reasonable costs incurred in collecting the delinquent~~
27 ~~assessment, including reasonable attorney’s fees.~~

28 ~~(2) A late charge not exceeding 10 percent of the delinquent~~
29 ~~assessment or ten dollars (\$10), whichever is greater, unless the~~
30 ~~declaration specifies a late charge in a smaller amount, in which~~
31 ~~case any late charge imposed shall not exceed the amount specified~~
32 ~~in the declaration.~~

33 ~~(3) Interest on all sums imposed in accordance with this section,~~
34 ~~including the delinquent assessments, reasonable fees and costs~~
35 ~~of collection, and reasonable attorney’s fees, at an annual interest~~
36 ~~rate not to exceed 12 percent, commencing 30 days after the~~
37 ~~assessment becomes due, unless the declaration specifies the~~
38 ~~recovery of interest at a rate of a lesser amount, in which case the~~
39 ~~lesser rate of interest shall apply.~~

1 ~~(g) Associations are hereby exempted from interest-rate~~
2 ~~limitations imposed by Article XV of the California Constitution;~~
3 ~~subject to the limitations of this section.~~

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